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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Gary G. Sackett

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December 19, 2001

Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S. W.  
Washington, D.C. 20554

Dear Ms. Salas:

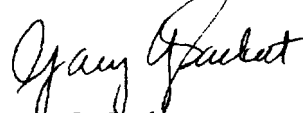
Re: Docket No. WT-01-287

Enclosed for filing on behalf of Great Western Aviation, Inc. in the referenced proceeding are an original and 14 copies of (a) Motion for Waiver of Hearing Fees and (b) Notice of Appearance of Counsel, and a check for \$145.00, tendered under 47 C.F.R. § 1.1102.2.k, to the extent deemed appropriate by the Commission.

Also enclosed is an extra copy of both filings. Please file-stamp them and return to the courier. If there are any questions, please call me at (801) 534-7336. Thank you for your assistance.

Yours very truly,

JONES, WALDO, HOLBROOK & McDONOUGH

  
Gary G. Sackett

Enclosures

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Date: December 19, 2001

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TO THE  
ORDER OF:

Federal Communications Commission

Mr. D. Wahl

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Check #: 129946

**JONES, WALDO, HOLBROOK & McDONOUGH, P.C.**

Check Date: Dec 19/01

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| 121901          | Dec 19/01 |          | 13526  | 0001   | Federal Communications Commission; hearin | 145.00   | 145.00    |
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DEC 20 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington D.C. 20554

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IN THE MATTER OF THE APPLICATION OF )  
GREAT WESTERN AVIATION, INC. FOR )  
RENEWAL OF AERONAUTICAL ADVISORY STA- )  
TION KQA7, LOGAN-CACHE )  
AIRPORT, LOGAN, UTAH )

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File No. 987931

WT Docket No. 01-287

IN THE MATTER OF THE APPLICATION OF )  
UTAH JET CENTER LLC FOR A NEW )  
AERONAUTICAL ADVISORY STATION AT LOGAN- )  
CACHE AIRPORT, LOGAN, UTAH )

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File No. 845177

**MOTION FOR WAIVER OF HEARING FEES**

To: Andrew S. Fishel, Managing Director

Pursuant to 47 C.F.R. §§ 1.1117 & 1.925 (2001), Great Western Aviation, Inc. ("Great Western") respectfully requests that the Federal Communications Commission, through its Managing Director, waive the hearing fees applicable to the contested applications for licensure

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of an aeronautical advisory station (unicom) frequency at Logan-Cache Airport, Logan, Utah. Pursuant to §1.1102.1.k, a check for \$145.00 is enclosed.<sup>1</sup>

*Introduction.* Great Western is the incumbent licensee of the unicom frequency 122.8 MHz at the Logan airport and filed an application for renewal of that license on November 24, 2000, File No. 987931. Utah Jet Center, Inc. (“Jet Center”) filed a competing application for unicom frequency licensure at the Logan Airport on December 7, 2000, File No. 845177. The competing applications have been combined in WT Docket No. 01-287. Accompanying its Notice of Appearance and Intent to Appear, dated November 19, 2001, was Jet Center’s hearing fee of \$9,020.

Chief Administrative Law Judge Richard L. Sippel held an informal pre-hearing telephone conference on the matter on December 3, 2001, to discuss procedural matters associated with the case. At that time, Great Western expressed its concerns about the relative economics of the necessity for parties contesting a unicom license to incur major expenditures (filing costs of \$9,020 each, the costs of travel to Washington, the costs of retaining counsel for a “live” hearing, etc.) to obtain a license that, for all intents and purposes, has no economic value to the holder.

In that regard, Great Western sought leave to file a motion with the Commission for such waivers as would be necessary to allow the resolution of the competing applications (a) by submitting the matter for adjudication primarily (if not wholly) on written submissions and telephone conference proceedings, and (b) waiving the \$9,020 hearing fees for both applicants.

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<sup>1</sup>It is not clear to Great Western that this fee schedule is applicable to a waiver of this kind. To the extent it is not, Great Western requests that the tendered amount be returned, payable to Great Western Aviation, Inc.

On December 3, 2001, Judge Sippel issued an order holding the licensure matter in abeyance until the parties had an opportunity to file a request with the Managing Director of the Commission relative to the fee-waiver issue. In the informal phone conference on December 3, Judge Sippel also indicated he was favorably inclined, to the extent feasible, to conduct any further adjudicatory proceedings along the “paper hearing” lines suggested by Great Western.<sup>2</sup> However, it would be necessary to resolve the hearing-fee issue first. Hence, this waiver request is made to the Managing Director pursuant to 47 C.F.R. §§ 1.1117 & 1.925.<sup>3</sup>

*Hearing Fees Are Unwarranted. Under the Circumstances.* Unlike most (if not all) contested license proceedings before the Commission, unicom licenses carry with them no inherent economic value or competitive advantage. That is, the licensee must operate the unicom frequency in a nondiscriminatory fashion that does not give the licensee any advantage over other fixed base operators (“FBOs”) serving the airport. Although there may be some minimal intangible value to the license, the licensee cannot parlay its position into a significant economic asset.

Accordingly, there is no economically sound or public-policy basis for an applicant to be required to spend upwards of \$25,000 in filing fees, attorneys’ fees and travel costs in pursuit of the license. The issue here merely involves two FBO applicants that are located in a small town over 2,000 miles from Washington D.C. Each has reasons that it seeks renewal or initial

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<sup>2</sup>The original filing deadline for such a motion was set for December 13, 2001. As a result of a family emergency for one of counsel, the filing date was continued to December 20, 2001, by Judge Sippel. Attached are copies of Judge Sippel’s abeyance orders.

<sup>3</sup>During the December 3, telephone conference conducted by Judge Sippel, counsel for Jet Center indicated that he was not opposed to an effort to waive the fees for both parties. Great Western has been informed that Jet Center may no longer subscribe to that position.

assignment of the license. But, travel to and from Washington to participate in “live” hearings—presumably the kind of proceedings envisioned by the \$9,020 fee—should not be necessary in a case with relatively little economic gain at stake and factual issues that are simply stated and can be treated with “paper hearings” and conference-call proceedings. The relevant factual matters governing the final award decision are quite straightforward and can largely—if not wholly—be submitted in written materials such as argument, exhibits, affidavits and other supporting information, with telephone conferences used as necessary. In that regard, it does not serve the public interest to require major expenditures that may, in other contested matters, be related to the actual procedural costs and be otherwise quite reasonable.

*47 C.F.R § 1.1117.* This waiver request is made directly by Great Western in respect to its own application and that of the other applicant, Jet Center, as required under § 1.1117(b). Further, Great Western is informed that competing applications for unicom licenses are rare.<sup>4</sup> Thus, there appear to be few if any circumstances for which a waiver granted here would have any material precedential effect.

For the reasons set forth above, Great Western has concluded that it cannot justify to its corporate owners an expenditure to retain its unicom license if it involves an up-front hearing cost of over \$9,000 and extensive travel and legal costs. If that is the price of “admission” to determine the unicom licensee best suited to serve the public, then Great Western will have to withdraw its application. Great Western believes the matter can be handled expeditiously and that the public interest is best served by a process that allows the Commission to examine the merits of the

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<sup>4</sup>Indeed, Roberto Mussenden of the Office of Enforcement indicated he was unaware of any previous contested proceeding involving a unicom license.

applications without eliminating an applicant because of regulatory costs that are unduly high for these circumstances.

Accordingly, this request for waiver of hearing fees is not accompanied by Great Western's tendered hearing fee, and, to the extent necessary, Great Western seeks such additional waiver of that part of § 1.1117(b) that requires filing Form 159 and the fee in question to permit this "question of first impression"<sup>5</sup> to be addressed by the Managing Director. Simply put: If the waiver is granted, a tendered fee would be returned under 47 C.F.R. § 1.1108; if it is not granted, Great Western will be forced by the economics of the process to withdraw its application with no fee involved. Great Western should not be required to tender a fee, the payment of which will not occur under either outcome.

*47 C.F.R. § 1.925.* This waiver request is also filed under 47 C.F.R. § 1.925, which applies to wireless telecommunications services applications and proceedings.<sup>6</sup> Great Western believes that the conditions for granting the requested fee and procedural waivers in this matter are satisfied:

(i) Granting the waivers would be in the public interest, as it would permit the Commission to evaluate the merits of both competing applicants for the public service of providing aeronautical advisory services at a non-towered airport. In the absence of waiver, the license will default one applicant without any consideration of the merits of a heretofore qualified licensee.

(ii) It has been indicated that contested applications for unicom licenses are rare, if not unprecedented. As Judge Sippel has indicated, this appears to be a "question of first impression"—i.e., it presents "unique or unusual circumstances," as the term is used in § 1.925(b)(2)(ii).

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<sup>5</sup>As characterized by Judge Sippel in his December 3 Order.


<sup>6</sup>Section 1.925 requires the filing of Forms 601, 603 or 605. Great Western previously filed its application on Form 601.

Further, as described above, it is contrary to the public interest and unduly burdensome on the applicants to require full hearing fees and full-fledged, live hearing procedures.

WHEREFORE, Great Western seeks waiver of the hearing fees for *both* applicants in the captioned proceeding at the Managing Director's earliest convenience, so that the remaining procedures and the merits can be brought back before Chief Judge Sippel for resolution. In connection with this motion, Great Western also requests that \$9,020 already tendered by Jet Center be returned pursuant to 47 C.F.R. § 1.1108.

RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of December 2001.

JONES, WALDO, HOLBROOK & McDONOUGH

By:   
\_\_\_\_\_  
Gary G. Sackett  
*Attorneys for Great Western Aviation, Inc.*



### CERTIFICATE OF SERVICE

I certify that, on the 19 th day of December 2001, I sent by first-class mail, postage prepaid, or caused to be delivered a correct copy of the foregoing MOTION FOR WAIVER OF HEARING FEES to the following:

Hon. Richard L. Sippel  
Chief Administrative Law Judge  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

L. Brent Hoggan  
OLSON & HOGGAN, PC  
P.O. Box 525  
Logan, Utah 84323

James Shook  
Federal Communications Commission, Office 3A463  
445 12th Street, S.W.  
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